

Message Text

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EA ONLY

E.O.11652: N/A
TAGS: SHUM, MY
SUBJECT: 1978 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES

REF: A) STATE 228826, B) KUALA LUMPUR 9322

1. WE THINK THE DRAFT HUMAN RIGHTS REPORT CONTAINED
REFTEL A IS VERY WELL DONE AND WOULD MAKE ONLY THE
FOLLOWING MINOR COMMENTS.

2. THE REPORT SHOULD SAY SOMETHING ABOUT THE INDEPENDENCE
AND INTEGRITY OF THE JUDICIARY AS OUTLINED IN REFTEL B.
SUGGEST THE FOLLOWING LANGUAGE FOR SECTION 1D.

"MODELLED ON THE BRITISH JUDICIARY, THE MALAYSIAN
COURTS ARE GENERALLY HELD BY THE PUBLIC AND THE LEGAL
COMMUNITY TO BE DEDICATED TO THE RULE OF LAW AND NOT
SUSCEPTIBLE TO PRESSURE FROM THE EXECUTIVE. MOST CIVIL
AND CRIMINAL CASES ARE TRIED UNDER THIS JUDICIAL
SYSTEM AND THUS PUBLIC TRIAL AND A FAIR HEARING OCCUR
IN ALL BUT A SMALL MINORITY OF CASES. AS PREVIOUSLY
NOTED, PERSONS DETAINED FOR SECURITY REASONS AND
CERTAIN TYPES OF CRIMINALS ARE HELD AND PROVIDED
HEARINGS UNDER SPECIAL PROCEDURES OUTSIDE THE ORDINARY
COURT SYSTEM. (SEE 1.C.)."

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3. IN SECTION 1 C A CLEAR DISTINCTION SHOULD BE
DRAWN BETWEEN THE ISA, UNDER WHICH DETENTION CAN BE
EXTENDED INDEFINITELY, AND THE EMERGENCY ORDINANCE,
WHICH DOES NOT PROVIDE FOR EXTENSION. PARAGRAPH 2 OF
SECTION 1 C SHOULD THUS READ: "A PERSON DETAINED
UNDER THE EMERGENCY LAWS HAS NO RECOURSE TO THE

COURTS IN THE ORDINARY SENSE, BUT AS SOON AS POSSIBLE AFTER ARREST MUST BE TOLD THE REASON AND GIVEN A CHANCE TO ARGUE THE CASE. UNDER THE ISA, IF DETENTION IS CONTESTED, IT MUST BE HEARD WITHIN THREE MONTHS BY A THREE-MAN ADVISORY BOARD. IF THE DETENTION CONTINUES, THE CASE IS PERIODICALLY REVIEWED BY THE APPEALS BOARD AND MAY THEN BE RENEWED. IN MOST CASES THE USE OF THE ISA APPEARS TO FOLLOW A CYCLE OF ARREST, DETENTION, RECANTATION AND RESTORATION TO PUBLIC RESPECTIBILITY. THE EMERGENCY ORDINANCE, WHILE ENACTED IN THE WAKE OF THE MAY 1969 RACIAL DISTURBANCES, HAS IN PRACTICE BEEN MOST OFTEN USED AGAINST NARCOTICS TRAFFICKERS AND OTHER SERIOUS CRIMINALS IN THE ABSENCE OF STRONG CONSPIRACY LAWS. THE NORMAL PATTERN FOR ENFORCING THE E.O., WHICH MAKES NO PROVISION FOR RENEWAL FOR THE PERIOD OF IMPRISONMENT, IS TWO YEARS IMPRISONMENT FOLLOWED BY TWO YEARS OF "RESTRICTED RESIDENCE" IN A REMOTE AREA OF THE COUNTRY."

4. IN PARAGRAPH 3 OF SECTION 1 C, THE ESSENTIAL (SECURITY CASES) REGULATIONS WERE ENACTED IN 1975 RPT 1975 AND NOT 1965 (WE MISSED THIS LAST YEAR).

5. IN SECTION 2 B, THE DEPT. MAY WISH TO ADD THE FOLLOWING PENULTIMATE SENTENCE: "DURING THE RECENT LIMITED OFFICIAL USE

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GENERAL ELECTION THE SABAH AND SARAWAK STATE GOVERNMENTS, APPARENTLY WITHOUT THE APPROVAL OF THE FEDERAL GOVERNMENT, ARBITRARILY DENIED ENTRY TO SOME OPPOSITION POLITICIANS FROM PENINSULAR MALAYSIA."
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